IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 141 of 1986
WITH
CIVIL APPLICATION NO.1013 OF 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KOLI PATEL KALU TALSHI & 3 - Appellant(s)
Versus
VORA KAHABHAI ZINABHAI - Defendant(s)

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Appearance :
MR BB NAIK for Appellants
None for the Respondent though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/02/2007

ORAL JUDGMENT

1. The respondent-plaintiff filed the suit praying inter-alia that as he is in possession of the suit property, the present appellants-defendants be restrained from interferring with his possession. The defendants appeared before the Court and submitted that the property in question belonged to the defendants, the plaintiff being money lender, after advancing some loan, required the defendant No.1 to execute a sale deed in favour of the plaintiff with an assurance that on payment of the money, the document would not come in effect. It is submitted before the lower Court that they were in possession of the property.
2. The learned trial Court after recoding the evidence and hearing the parties came to the conclusion that the plaintiff being in possession of the property was entitled to a decree of injunction. The said decree was confirmed in the appeal. Therefore, the defendants are before this Court.
3. The appeal has been admitted for hearing on the following substantial questions of law.

> “1. Whether the Courts below erred in coming to the conclusion that the appellants were in possession

of the suit land on the date of the suit or not ?

2. Whether the Courts below erred in not deciding the issue that the sale deed relied upon by the respondent plaintiff was a bogus sale deed and got executed by misrepresenting the same to be a document of mortgage or not ?”

4. It appears that the question No.2 could not be framed properly and the word “not” could not be included in the said question.

5. After taking me through the record, Shri Nayak, learned counsel for the appellant, submitted that the defendants are in possession of the property and the Courts below were required to decide the question of so-called title of the plaintiff and that whether the sale deed was sham and bogus.

6. In a suit for injunction, the question of title is not required to be decided. It simply comes on the record because some party or the other says that they are in possession of the property as owners. In the present case, the defendants did not file any counter claim nor did they file an independent suit seeking a declaration in their favour that the sale deed was sham and bogus, it was not to be

acted upon and the plaintiff did not acquire any right under the sale deed. In absence of such claim by the defendants, the Courts below were not required to enter into the question of title and were simply required to record a finding that who was in possession of the property.

7. At this stage, Shri Nayak, learned counsel for the appellants, submits that the findings recorded by the two Courts are perverse because the Courts have not taken into consideration the effect of the fact that the plaintiff could not examine any person in support of his case, while the defendants had examined number of persons. His submission is that the plaintiff is absolutely unreliable because he could not even tell the Court that what were the names of the labourers employed by him or what crops were taken by him.

8. In the opinion of this Court, non-availability of the details would not make the plaintiff unreliable. In any case, whether a person is reliable or not, would be within the domain of appreciation of evidence. A Court is not required to rely upon the quantity sacrificing the quality. If one quality witness can be relied upon, then the witnesses 100 in number can always be ignored. If the

Court relies upon one witness and the findings recorded by the said Court haves some foundation to stand and there is some evidence available to support such findings, then the findings cannot be termed as perverse.

9. The two Courts after appreciating the material available on the record have chosen to rely upon the statement of the plaintiff coupled with the title document which has been executed by the defendants in favour of the plaintiff which contains a note/ recital that the possession was handed over to the plaintiff

10. The findings recorded by the two Courts below are the findings of facts. This Court is unable to interfere with the matter. The two Courts below were justified in holding that the plaintiff was in possession of the property and did not commit any error in not deciding the question of title. The appeal deserves to and is accordingly dismissed. Interim relief, if any, is vacated. Let a decree be framed accordingly.

11. Civil Application No.1013 of 1986 stands disposed of.

(R.S. GARG, J.)

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